

Louisiana Law Review

Volume 3 | Number 3
March 1941

Community Property - Workmen's Compensation - Right of Injured Wife to Sue

R. B. L.

Repository Citation

R. B. L., *Community Property - Workmen's Compensation - Right of Injured Wife to Sue*, 3 La. L. Rev. (1941)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol3/iss3/9>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Notes

COMMUNITY PROPERTY—WORKMEN'S COMPENSATION—RIGHT OF INJURED WIFE TO SUE—Injured wife sued for Workmen's Compensation under Act 20 of 1914.¹ Defendant excepted to suit by the wife on the ground that the compensation, like wages of the wife, was a community asset which must be sued for in the name of the husband. *Held*, that the wife could sue since Workmen's Compensation is personal to and for the benefit of the worker as long as the worker is living.² *Brownfield v. Southern Amusement Company*, 196 La. 74, 198 So. 656 (1940).

The principal case is based upon the logic that the Workmen's Compensation statute is so complete within itself that there is no necessity for reference to our community property laws to determine the ownership of the compensation.³ For this reason, the court did not consider whether Workmen's Compensation should be treated as a substitute for earnings which would fall into the community⁴ or as a tort action for personal injuries which would be the separate property of the wife.⁵ If this reasoning is to be carried to its logical conclusion, a recovery by the husband under the Workmen's Compensation Act would likewise be his separate property in spite of the fact that both wages⁶ and damages for personal injuries⁷ received by the husband become community property.

The court's position in the instant case is logically sound, and

1. Dart's Stats. (1939) §§ 4391-4434.

2. On the merits, the case was finally decided for the defendant because the plaintiff's work was not hazardous.

3. *Brownfield v. Southern Amusement Co.*, 198 So. 656, 659 (La. 1940): "The theory upon which workmen's compensation is founded is that compensation for injuries received in the course of employment is due only to the injured employee and to certain designated dependents in case of his death from injury. . . . The relief is purely statutory and is solely for the benefit of and personal to the injured employee. . . ."

4. *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933), earnings of wife fall into the community unless she is living separate from her husband.

5. *Harkness v. Louisiana & N.W. R.R.*, 110 La. 822, 34 So. 791 (1903); *Martin v. Derenbecker*, 116 La. 495, 40 So. 849 (1906); *Shield v. F. Johnson & Son Co.*, 132 La. 773, 61 So. 787 (1931). See also Note (1937) 11 Tulane L. Rev. 649.

6. Arts. 2334, 2402 La. Civil Code of 1870.

7. Art. 2334, La. Civil Code of 1870, provides that damages recovered by the husband are community property except in the case where the husband is living separate and apart from his wife by reason of fault on her part, sufficient for separation or divorce, in which case it shall be his separate property.

it has the procedural advantage of permitting the injured wife to recover in Workmen's Compensation without the necessity of an inquiry into her marital status and without a limitation upon the recovery when the husband has not joined in the suit.

As a matter of public policy, however, it seems preferable that workmen's compensation should be community property on the theory that joint ownership of property and identity of interests help the family to withstand economic and social hardships. In addition, there remains the fact that the compensation is for the loss of wages⁸ which is a loss to the community rather than the individual. For those reasons, it might have been desirable⁹ if the court had interpreted the workmen's compensation as falling within the provision of Article 2334¹⁰ that: "Common property is that which is acquired by the husband and wife during marriage, in any manner different from that above declared."

R. B. L.

CORPORATIONS — NOTICE OF DISSENTING SHAREHOLDERS' DEMANDS — DUE PROCESS OF LAW—Shareholders dissenting in the vote to transfer all corporate property gave proper notice to the corporation of their objection and also notified the company of the value claimed for their shares, and demanded the purchase of the shares by the corporation as provided by statute.¹ The corporation gave notice of its refusal to pay the price asked, but it did not set a value it would be willing to pay. After six months, the dissenters secured judgment condemning the corporation to pay the value set in the dissenters' notices, in accordance with the provisions of the statute.² The Supreme Court of Ohio held the

8. "As respects the injured employee, the law declares that he shall be given compensation for the loss of his earnings." *Brownfield v. Southern Amusement Co.*, 198 So. 656, 659 (La. 1940). See also *Carlino v. United States Fidelity & Guaranty Co.*, 199 So. 228 (La. 1940) (worker is not entitled to compensation as long as he is receiving wages equal to the amount of compensation he would otherwise be receiving); *Veasey v. Peters*, 142 La. 1012, 77 So. 948 (1918) (purpose of workmen's compensation is to compensate for loss of earning power).

9. This possibility was suggested by counsel but not discussed in the court's opinion. See Brief on behalf of Appellant, *New Amsterdam Casualty Co.*, p. 15; *Brownfield v. Southern Amusement Co.*, 196 La. 74, 198 So. 656 (1940).

10. La. Civil Code of 1870.

1. Ohio Gen. Code Ann. (Page, 1938) § 8623-72. Cf. La. Act 250 of 1928, § 52 [*Dart's Stats.* (1939) § 1132].

2. *Ibid.*